

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5678 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

SA VASAVA

Appearance:

MR HARDIK C RAWAL for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/10/1999

ORAL JUDGEMENT

Learned advocate Mr. Raval is appearing for the
petitioner corporation. The respondent workman has been
served with notice of rule. However, he has not appeared
either in person or through an advocate.

2. The facts of the present petition, in short, are
that the respondent was working with the petitioner
corporation as conductor and that there was some

allegation against him to recover the fare from some passenger and not issuing ticket to the passengers and about irregularity in maintaining the way bill. ON the basis of the said allegations, chargesheet was issued to the respondent workman and after completion of the departmental inquiry, the respondent workman was dismissed from service which order of dismissal was challenged by the respondent workman before the labour court, Surat by filing reference No. 319 of 1985. Before the labour court, the respondent workman has filed purshis Exh. 10 wherein he has admitted the legality and validity of the departmental inquiry held against him and has also requested that considering the misconduct, the punishment of dismissal from service is harsh and disproportionate and has urged for appropriate order leaving the aspect of back wages at the discretion of the Court. Copy of the said purshis was served to the advocate for the corporation wherein an endorsement was made by the advocate for the petitioner that he is objecting against the back wages part. Therefore, in view of such an endorsement made by the learned advocate for the petitioner corporation before the labour court, the labour court understood it is impliedly consenting for the reinstatement of the respondent workman. In view of such presumption and understanding of the labour court that the petitioner corporation is not seriously objecting the reinstatement but is objecting only back wages for the intervening period, the labour court directed the petitioner corporation to reinstate the respondent corporation in service with continuity of service but without back wages. The labour court considered the evidence on record and has also taken into consideration the decision of this court reported in RM Parmar versus G.E.Board. The labour court has come to the conclusion that looking to the misconduct in question, punishment of dismissal is harsh and disproportionate and, therefore, while exercising the discretionary powers under section 11A of the Industrial Disputes Act, 1947, the labour court directed the petitioner corporation to reinstate the respondent in service with continuity of service and without back wages. Said judgment and award of the labour court has been challenged by the petitioner corporation before this court by filing this petition.

During the course of submissions, Mr.Raval, the learned advocate for the petitioner corporation has drawn the attention of this court to page 10 of the petition and has submitted that while discussing the said issue of quantum of punishment, the labour court has suggested that in such cases, instead of dismissal, punishment of

stoppage of two years' annual increments without cumulative effect would be just and proper. However, in the concluding portion of the award, this has not been incorporated and it must have happened through oversight. This submission of Mr. Raval is quite just and proper. I have gone through the observations made by the court in paragraph 10 of the award. The labour court has suggested that considering the quantum of punishment, instead of dismissal, punishment of stoppage of two years' annual increments without cumulative effect would be just and proper. Therefore, in light of these facts, the award of the labour court is required to be modified to that extent. Accordingly, the impugned award of the labour court is modified by directing the petitioner corporation to reinstate the respondent workman in service with continuity of service without back wages. The petitioner corporation is further directed to stop two annual increments of the respondent workman without future effect. The award of the labour court is modified to the above effect. Rule is made absolute in above terms with no order as to costs.

8.10.1999. (H.K.Rathod,J.)

Vyas